

**Introduced by Senator Figueroa**

February 22, 2002

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An act to amend Section 7071.11 of the Business and Professions Code, and to amend Section 116.220 of the Code of Civil Procedure, relating to contractors' sureties.

LEGISLATIVE COUNSEL'S DIGEST

SB 1919, as introduced, Figueroa. Sureties: contractors: small claims.

(1) Existing law requires the surety of a contractor to notify the Registrar of Contractors of any payment on any claim against the contractor's bond within 30 days of making the payment. Existing law, with specified exceptions, provides that any judgment or admitted claim against, or good faith payment from, a bond shall constitute grounds for disciplinary action against a contractor by the Contractors' State License Board.

This bill would provide that the surety is not required to notify the Registrar of Contractors of any judgment or admitted claim against, or good faith payment from, a bond, if the contractor has, in writing, timely instructed the surety not to make payment on certain specific grounds.

This bill, with respect to payments made by a surety that are reported to the Registrar of Contractors, would provide that the contractor's license shall be suspended by operation of law if proof of payment of the amount owed to the surety has not been made by the contractor within 90 days after the contractor is notified to that effect by the Contractors' State License Board. This bill would also provide that a contractor's license may not be renewed, reissued, or reinstated while any judgment or admitted claim in excess of the amount of the

contractor's bond remains unsatisfied or while the surety remains unreimbursed for loss and expense sustained on the bond. The bill would provide that these license suspension provisions do not apply if the contractor has filed for bankruptcy.

(2) Under existing law, a small claims court generally has jurisdiction over claims for the recovery of money if the amount of the demand doesn't exceed \$5,000. However, existing law also provides that a small claims court shall have jurisdiction over a defendant guarantor who is required to respond based upon the default, actions, or omissions of another, only if the demand does not exceed \$4,000, if the defendant guarantor charges a fee for its guarantor or surety services or the defendant guarantor is the Registrar of the Contractors' State License Board.

This bill would delete the latter exception to the general monetary jurisdiction of a small claims court.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 7071.11 of the Business and Professions  
2 Code is amended to read:  
3 7071.11. (a) A copy of the complaint in a civil action  
4 commenced by a person claiming against a bond required by this  
5 article shall be served by registered or certified mail upon the  
6 registrar by the clerk of the court at the time the action is  
7 commenced and the registrar shall maintain a record, available for  
8 public inspection, of all actions so commenced. The aggregate  
9 liability of a surety on a claim for wages and fringe benefits  
10 brought against any bond required by this article, other than a bond  
11 required by Section 7071.8, shall not exceed the sum of four  
12 thousand dollars (\$4,000). If any bond which may be required is  
13 insufficient to pay all claims in full, the sum of the bond shall be  
14 distributed to all claimants in proportion to the amount of their  
15 respective claims. Any action, other than an action to recover  
16 wages or fringe benefits, against a contractor's bond or a bond of  
17 a qualifying individual filed by an active licensee shall be brought  
18 within two years after the expiration of the license period during  
19 which the act or omission occurred, or within two years of the date  
20 the license of the active licensee was inactivated, canceled, or

1 revoked by the board, whichever first occurs. Any action, other  
2 than an action to recover wages or fringe benefits, against a  
3 disciplinary bond filed by an active licensee pursuant to Section  
4 7071.8 shall be brought within two years after the expiration of the  
5 license period during which the act or omission occurred, or within  
6 two years of the date the license of the active licensee was  
7 inactivated, canceled, or revoked by the board, or within two years  
8 after the last date for which a disciplinary bond filed pursuant to  
9 Section 7071.8 was required, whichever date is first. A claim to  
10 recover wages or fringe benefits shall be brought within six  
11 months from the date that the wage or fringe benefit delinquencies  
12 were discovered, but in no event shall a civil action thereon be  
13 brought later than two years from the date the wage or fringe  
14 benefit contributions were due.

15 (b) When the surety makes payment on any claim against a  
16 bond required by this article, whether or not payment is made  
17 through a court action or otherwise, the surety shall, within 30 days  
18 of the payment, notify the registrar *of any judgment or admitted*  
19 *claim against, or good faith payment from, a bond required by this*  
20 *article except for those cases of good faith payment where the*  
21 *licensee has, in writing, timely instructed the surety not to make*  
22 *payment from the bond on his or her account, upon the specific*  
23 *grounds that (1) the claim is opposed by the licensee, and (2) the*  
24 *licensee has, in writing, previously directed to the surety a specific*  
25 *and reasonable basis for his or her opposition to payment.* The  
26 notice shall contain, on a form prescribed by the registrar, the name  
27 and license number of the contractor, the surety bond number, the  
28 amount of payment, the statutory basis upon which the claim is  
29 made, and the names of the person or persons to whom payments  
30 are made.

31 ~~(c) Any judgment or admitted claim against, or good faith~~  
32 ~~payment from, a bond required by this article shall constitute~~  
33 ~~grounds for disciplinary action against the licensee, except in those~~  
34 ~~cases of good faith payment where the licensee has, in writing,~~  
35 ~~timely instructed the surety not to make payment from the bond on~~  
36 ~~his or her account, upon the specific grounds that (1) the claim is~~  
37 ~~opposed by the licensee, and (2) the licensee has, in writing,~~  
38 ~~previously directed to the surety a specific and reasonable basis for~~  
39 ~~his or her opposition to payment. The license may not be reissued~~  
40 ~~or reinstated while any judgment or admitted claim in excess of the~~

1 ~~amount of the bond remains unsatisfied. Further, the license may~~  
2 ~~not be reissued or reinstated while any surety remains~~  
3 ~~unreimbursed for loss and expense sustained on any bond issued~~  
4 ~~for the licensee or for any entity of which any officer, director,~~  
5 ~~member, partner, or qualifying person was an officer, director,~~  
6 ~~member, partner, or qualifying person of the licensee while the~~  
7 ~~licensee was subject to disciplinary action under this section. The~~  
8 ~~board shall require the licensee to file a new bond in an amount as~~  
9 ~~required pursuant to Section 7071.8. The licensee shall have 90~~  
10 ~~days from the date of notification by the board to submit proof of~~  
11 ~~payment of the actual amount owed to the surety. By operation of~~  
12 ~~law, the license shall be suspended at the end of the 90 days if the~~  
13 ~~payment of claim has not been satisfied. The license may not be~~  
14 ~~renewed, reissued, or reinstated while any judgment or admitted~~  
15 ~~claim in excess of the amount of the bond remains unsatisfied.~~  
16 ~~Further, the license may not be renewed, reissued, or reinstated~~  
17 ~~while any surety remains unreimbursed for loss and expense~~  
18 ~~sustained on any bond issued for the licensee or for any entity of~~  
19 ~~which an officer, director, member, partner, or qualifying person~~  
20 ~~was an officer, director, member, partner, or qualifying person of~~  
21 ~~the licensee while the licensee was subject to disciplinary action~~  
22 ~~under this section.~~

23 *The licensee may provide the board with a notarized copy of an*  
24 *accord reached with the surety to satisfy the debt in lieu of full*  
25 *payment. By operation of law, failure to abide by the accord shall*  
26 *result in the automatic suspension of any license to which this*  
27 *section applies. A license that is suspended for failure to abide by*  
28 *the accord can only be renewed or reinstated when proof of*  
29 *satisfaction of all debts is made.*

30 *This subdivision does not apply to a licensee when a bankruptcy*  
31 *proceeding has been filed by the licensee.*

32 (d) Legal fees may not be charged against the bond by the  
33 board.

34 (e) In any case in which a claim is filed against a deposit given  
35 in lieu of a bond by any employee or by an employee organization  
36 on behalf of an employee, concerning wages or fringe benefits  
37 based upon the employee's employment, claims for the  
38 nonpayment shall be filed with the Labor Commissioner. The  
39 Labor Commissioner shall, pursuant to the authority vested by  
40 Section 96.5 of the Labor Code, conduct hearings to determine

whether or not the wages or fringe benefits should be paid to the complainant. Upon a finding by the commissioner that the wages or fringe benefits should be paid to the complainant, the commissioner shall notify the registrar of the findings. The registrar shall not make payment from the deposit on the basis of findings by the commissioner for a period of 10 days following determination of the findings. If, within the period, the complainant or the contractor files written notice with the registrar and the commissioner of an intention to seek judicial review of the findings pursuant to Section 11523 of the Government Code, the registrar shall not make payment, if an action is actually filed, except as determined by the court. If, thereafter, no action is filed within 60 days following determination of findings by the commissioner, the registrar shall make payment from the deposit to the complainant.

(f) Any action, other than an action to recover wages or fringe benefits, against a deposit given in lieu of a contractor's bond or bond of a qualifying individual filed by an active licensee shall be brought within three years after the expiration of the license period during which the act or omission occurred, or within three years after the date the license was inactivated, canceled, or revoked by the board, whichever first occurs. Any action, other than an action to recover wages or fringe benefits, against a deposit given in lieu of a disciplinary bond filed by an active licensee pursuant to Section 7071.8 shall be brought within three years after the expiration of the license period during which the act or omission occurred, or within three years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, or within three years after the last date for which a deposit given in lieu of a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first. If the board is notified of a complaint relative to a claim against the deposit, the deposit shall not be released until the complaint has been adjudicated.

SEC. 2. Section 116.220 of the Code of Civil Procedure is amended to read:

116.220. (a) The small claims court shall have jurisdiction in the following actions:

(1) Except as provided in subdivisions ~~(e), (e), and (f)~~ (d) and (e), for recovery of money, if the amount of the demand does not exceed five thousand dollars (\$5,000).

(2) Except as provided in subdivisions ~~(e), (e), and (f)~~ (d) and (e), to enforce payment of delinquent unsecured personal property taxes in an amount not to exceed five thousand dollars (\$5,000), if the legality of the tax is not contested by the defendant.

(3) To issue the writ of possession authorized by Sections 1861.5 and 1861.10 of the Civil Code if the amount of the demand does not exceed five thousand dollars (\$5,000).

(4) To confirm, correct, or vacate a fee arbitration award not exceeding five thousand dollars (\$5,000) between an attorney and client that is binding or has become binding, or to conduct a hearing de novo between an attorney and client after nonbinding arbitration of a fee dispute involving no more than five thousand dollars (\$5,000) in controversy, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code.

(b) In any action seeking relief authorized by subdivision (a), the court may grant equitable relief in the form of rescission, restitution, reformation, and specific performance, in lieu of, or in addition to, money damages. The court may issue a conditional judgment. The court shall retain jurisdiction until full payment and performance of any judgment or order.

~~(c) Notwithstanding subdivision (a), the small claims court shall have jurisdiction over a defendant guarantor who is required to respond based upon the default, actions, or omissions of another, only if the demand does not exceed (1) two thousand five hundred dollars (\$2,500), or (2) on and after January 1, 2000, four thousand dollars (\$4,000), if the defendant guarantor charges a fee for its guarantor or surety services or the defendant guarantor is the Registrar of the Contractors' State License Board.~~

~~(d)~~ In any case in which the lack of jurisdiction is due solely to an excess in the amount of the demand, the excess may be waived, but any waiver shall not become operative until judgment.

~~(e)~~

(d) Notwithstanding subdivision (a), in any action filed by a plaintiff incarcerated in a Department of Corrections facility or a Youth Authority facility, the small claims court shall have jurisdiction over a defendant only if the plaintiff has alleged in the complaint that he or she has exhausted his or her administrative remedies against that department, including compliance with Sections 905.2 and 905.4 of the Government Code. The final

1 administrative adjudication or determination of the plaintiff's  
2 administrative claim by the department may be attached to the  
3 complaint at the time of filing in lieu of that allegation.

4 ~~(f)~~

5 (e) In any action governed by subdivision ~~(e)~~ (d), if the plaintiff  
6 fails to provide proof of compliance with the requirements of  
7 subdivision ~~(e)~~ (d) at the time of trial, the judicial officer shall, at  
8 his or her discretion, either dismiss the action or continue the  
9 action to give the plaintiff an opportunity to provide such proof.

10 ~~(g)~~

11 (f) For purposes of this section, “department” includes an  
12 employee of a department against whom a claim has been filed  
13 under this chapter arising out of his or her duties as an employee  
14 of that department.

